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**CONSULTANT SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND FCS GROUP, INC.,
TO CONDUCT A COMPREHENSIVE WATER AND WASTEWATER UTILITY
COST OF SERVICE RATE STUDY**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and FCS GROUP, INC., a California corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to conducting a comprehensive water and wastewater utility cost of service rate study; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from the date of contract execution through completion of the services described in Exhibit "A", unless otherwise terminated. Estimated time for completion is four (4) months. Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT an amount not to exceed One Hundred Ten Thousand and no/100 Dollars (\$110,000.00). CONSULTANT shall submit invoices to CITY no more frequently than monthly during the term of this Agreement. Payment will be made within thirty (30) days of receipt of an accurate, itemized invoice by CITY'S Accounts Payable Unit.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT'S working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability, or any other basis to the extent prohibited by federal, state, or local law. All employees of CONSULTANT shall be treated during employment without regard to their race, creed, color or national origin.
- (b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Indemnity

CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates and endorsements as specified in Exhibit "C".

12. CITY Representative

Timothy J. Kirby, Revenue Systems Supervisor, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Ed Cebron, Vice President, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY:	Timothy J. Kirby Revenue Systems Supervisor Department of Finance CITY OF SUNNYVALE P. O. Box 3707 Sunnyvale, CA 94088-3707
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To CONSULTANT: Jeanette Hahn
Director of California Branch Operations
FCS GROUP, INC.
50 California Street, Suite 1500
San Francisco CA 94111

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Subcontracts and Assignment

The parties agree that CONSULTANT shall subcontract certain tasks in relation to the services described in Exhibit "A" attached and incorporated by reference. Nevertheless, CONSULTANT shall be responsible for all subcontracted services as if performing the services themselves. CONSULTANT shall also be responsible for ensuring that all its subcontractors comply with applicable insurance requirements and other relevant provisions of this Agreement.

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

City Clerk

City Manager

APPROVED AS TO FORM:

FCS GROUP, INC. ("CONSULTANT")

City Attorney

Name and Title

Name and Title

EXHIBIT "A"

SCOPE OF SERVICES

CONSULTANT shall perform a detailed and forward looking review of CITY's current water and wastewater services and develop an equitable method of allocating the costs of providing water and wastewater service to appropriately defined customer classes.

A. Rate Structure - CONSULTANT shall develop a rate structure for CITY's water and wastewater utilities that:

1. Reflects CITY's policies regarding effective and efficient use of water and wastewater services;
2. Generates sufficient and stable revenues to pay for current and future water and wastewater services and related expenses.
3. Encourages a reduction in water consumption through appropriate pricing strategies.
4. Provides an overview of CITY's water and wastewater capital and infrastructure programs and proposes funding mechanisms to fund infrastructure replacement.
5. Includes an emergency rate structure to address loss of water supply through disaster, infrastructure failure or drought.

B. Project Objectives/Deliverables - At the conclusion of this project, CONSULTANT shall submit a written report which meets the following objectives and includes:

1. Water Supply and Distribution System

- a. An evaluation of CITY's current rate structure and its appropriateness to CITY's overall goals.
- b. A rate structure that legally allocates direct, indirect, fixed and variable costs to each customer class, based on its proportional use of the system. Included in the structure shall be use fees, meter charges, connection fees and other related water fees.
- c. A rate structure that promotes conservation through reasonable pricing strategies that are easy for customers to understand.
- d. A rate structure that communicates CITY's water supply and distribution policies clearly to its customers.
- e. A revised rate structure for customers outside CITY's boundaries.

- f. An emergency rate structure for implementation during periods of drought or natural or man-made disasters where water rationing may be required.
- g. A revenue requirement the CITY's Water Utility and an average rate for water services (i.e., a flat rate charge) for reference purposes.
- h. An analysis of CITY's availability, reliability and allocation of water supply (i.e. is CITY using the appropriate sources of supply from a cost perspective?),
- i. An evaluation of CITY's 10-year capital and infrastructure improvement program and recommendations for changes or improvement in both the process for identifying projects and for funding projects,
- j. An analysis of funding alternatives for long-term significant capital improvements with a recommendation detailing the best approach,
- k. Recommended changes or improvements, if needed, to CITY's customer classification structure.
- l. A discussion of the operational and cost impact of current and projected environmental regulations on CITY's water system,
- m. A determination of the cost per acre foot to produce, purchase and deliver each source of water, including recycled water, to CITY's customers on an aggregate basis. Details for each customer class shall be contained in the rate structure.

2. Wastewater Management System

- a. A determination of influent wastewater characteristics and loadings.
- b. An evaluation of the current rate structure and its appropriateness to CITY's overall goals.
- n. A rate structure that legally allocates direct, indirect, fixed and variable costs to each customer class, based on its proportional use of the system. Included in the structure shall be use fees, connection fees and other related wastewater fees.
- c. A rate structure that promotes conservation through reasonable wastewater pricing strategies that are easy for customers to understand.
- d. A rate structure that communicates CITY's wastewater management policies clearly to its customers.
- e. A revised rate structure for customers outside CITY's boundaries.

- f. A revenue requirement the CITY's Wastewater Utility and an average rate for wastewater services (i.e., a flat rate charge) for reference purposes.
- g. An evaluation of CITY's 10-year capital and infrastructure improvement program and recommendations for changes or improvement in both the process for identifying projects and for funding projects.
- h. An analysis of funding alternatives for long-term significant capital improvements with a recommendation detailing the best approach,
- i. A review of CITY's customer classification structure and recommended changes or improvements, if needed; specifically, an analysis of CITY's commercial wastewater rate structure. Consider the impact of multi-use properties on the wastewater system and how pricing should be structured to accommodate that impact,
- j. A discussion of the operational and cost impact of current and projected environmental regulations on CITY's wastewater system,
- k. A determination of the average cost per million gallons to treat and discharge wastewater.

C. Timetable for Completion

Project shall be completed within four months from project kick-off date. This assumes that valid data sets are readily available that that CITY's staff schedules can accommodate interim review meetings.

D. Project Team and Methodology

CONSULTANT shall use the Project Team and methodology described in CONSULTANT'S proposal which was submitted to CITY in response to Request for Proposals No. F0412-25 unless changes in either are approved by CITY, in writing, in advance of any change.

EXHIBIT "B"

COMPREHENSIVE WATER AND WASTEWATER UTILITY COST OF SERVICE RATE STUDY PROPOSED PROJECT COST SCHEDULE

Element & Task	FCS Group				Kennedy/Jenks							Total	
	Principal	Manager	Consultant	Admin.	Engineer 8	Engineer 7	Engineer 6	Engineer 5	Engineer 4	Engineer 3	Admin.	Hours	Cost
Hourly Rates	\$170	\$150	\$120	\$50	\$185	\$170	\$152	\$135	\$120	\$108	\$75		
I. Framework & Data Analysis													
A. Collect & Analyze Financial & System Data	-	2.0	16.0	-	2.0	4.0	4.0	-	4.0	10.0	-	42.0	5,438
B. Compile & Validate Customer Data	-	2.0	32.0	-	-	-	-	-	-	-	-	34.0	4,140
C. Develop Customer Statistics	-	1.0	12.0	-	-	-	-	-	-	-	-	13.0	1,590
D. Review Existing Rate Structures & Bases	1.0	2.0	6.0	-	-	-	-	-	-	-	-	9.0	1,190
E. Establish Policy Parameters	-	2.0	6.0	-	2.0	2.0	-	-	2.0	2.0	-	16.0	2,186
Subtotal: Framework & Data Analysis	1.0	9.0	72.0	-	4.0	6.0	4.0	-	6.0	12.0	-	114.0	14,544
II. Technical & Engineering Evaluation													
A. Analyze Water Source Utilization	-	-	-	-	2.0	16.0	-	-	-	24.0	-	42.0	5,682
B. Evaluate 10-Year Capital Program	-	-	-	-	24.0	4.0	16.0	-	24.0	12.0	-	80.0	11,728
C. Determine Influent Wastewater Characteristic	-	-	-	-	4.0	-	-	8.0	16.0	-	-	28.0	3,740
D. Analyze Regulatory Impacts	-	-	-	-	12.0	12.0	-	-	16.0	8.0	-	48.0	7,044
Subtotal: Technical & Engineering Evaluation	-	-	-	-	42.0	32.0	16.0	8.0	56.0	44.0	-	198.0	28,194
III. Revenue Requirements Forecast													
A. Analyze Capital Funding Needs	-	2.0	16.0	-	-	-	-	-	-	-	-	18.0	2,220
B. Develop Capital Funding Strategies	2.0	2.0	24.0	-	-	-	-	-	-	-	-	28.0	3,520
C. Forecast Operating Requirements	-	2.0	12.0	-	-	-	-	-	-	-	-	14.0	1,740
D. Test Revenue Sufficiency	-	2.0	10.0	-	-	-	-	-	-	-	-	12.0	1,500
E. Develop Rate Revenue Strategies	1.0	3.0	16.0	-	-	-	-	-	-	-	-	20.0	2,540
D. Generate Average Cost Statistics	-	3.0	6.0	-	2.0	2.0	-	-	-	-	-	13.0	1,880
Subtotal: Revenue Requirements Forecast	3.0	14.0	84.0	-	2.0	2.0	-	-	-	-	-	105.0	13,400
IV. Cost of Service Allocation													
A. Develop Functional Allocations	-	3.0	20.0	-	-	-	-	-	-	-	-	23.0	2,850
B. Develop Customer Classification	-	3.0	24.0	-	2.0	2.0	-	-	-	-	-	31.0	4,040
C. Analyze Potential Cost Shifts	1.0	3.0	12.0	-	-	-	-	-	-	-	-	16.0	2,060
D. Calculate Unit Cost Bases	-	2.0	10.0	-	-	-	-	-	-	-	-	-	1,500
E. Analyze Reclaimed Water Pricing Needs	1.0	4.0	8.0	-	-	-	-	-	-	-	-	13.0	1,730
Subtotal: Cost of Service Allocation	2.0	15.0	74.0	-	2.0	2.0	-	-	-	-	-	83.0	12,180
V. Rate Design													
A. Summarize Potential Structural Strategies	-	3.0	8.0	-	-	-	-	-	-	-	-	11.0	1,410
B. Design Three Water Rate Options	1.0	3.0	12.0	-	-	-	-	-	-	-	-	16.0	2,060
C. Design Three Wastewater Rate Options	1.0	3.0	12.0	-	-	-	-	-	-	-	-	16.0	2,060
D. Develop Outside-City Rate Differential	-	2.0	6.0	-	-	-	-	-	-	-	-	8.0	1,020
E. Develop Emergency Water Rate Structure	-	4.0	12.0	-	2.0	4.0	-	-	-	6.0	-	28.0	3,738
Subtotal: Rate Design	2.0	15.0	50.0	-	2.0	4.0	-	-	-	6.0	-	79.0	10,288
VI. Analysis of Other Utility Fees													
A. Calculate Connection Fees	0.5	2.0	18.0	-	-	-	-	-	-	-	-	20.5	2,545
B. Calculate Miscellaneous Utility Fees	-	1.0	16.0	-	-	-	-	-	-	-	-	17.0	2,070
Subtotal: Analysis of Other Utility Fees	0.5	3.0	34.0	-	-	-	-	-	-	-	-	37.5	4,615

(continued on next page)

EXHIBIT "B"

COMPREHENSIVE WATER AND WASTEWATER UTILITY COST OF SERVICE RATE STUDY PROPOSED PROJECT COST SCHEDULE

Element & Task	FCS Group				Kennedy/Jenks							Total	
	Principal	Manager	Consultant	Admin.	Engineer 8	Engineer 7	Engineer 6	Engineer 5	Engineer 4	Engineer 3	Admin.	Hours	Cost
Hourly Rates	\$170	\$150	\$120	\$50	\$185	\$170	\$152	\$135	\$120	\$108	\$75		
VII. Documentation													
A. Preparation of Draft Report	2.0	4.0	32.0	2.0	6.0	6.0	2.0	-	4.0	6.0	-	64.0	8,442
B. Preparation of Final Report	1.0	3.0	6.0	4.0	2.0	2.0	1.0	-	1.0	2.0	-	22.0	2,738
C. Finalization of Technical Models	1.0	1.0	4.0	1.0	-	-	-	-	-	-	-	7.0	850
Subtotal: Documentation	4.0	8.0	42.0	7.0	8.0	8.0	3.0	-	5.0	8.0	-	93.0	12,030
VIII. Meetings and Presentation													
A. Project Kick-Off Meeting with City Staff	-	2.0	3.0	-	2.0	3.0	-	-	-	-	-	10.0	1,540
B. Project Team Internal Kick-Off Meeting	-	3.0	3.0	-	2.0	2.0	-	-	-	-	-	10.0	1,520
C. Interim Review Meetings with City Staff	-	16.0	10.0	2.0	6.0	6.0	-	-	-	-	-	40.0	5,830
D. Presentation & Review of Draft Report	-	8.0	4.0	-	-	-	-	-	-	-	-	12.0	1,680
Subtotal: Meetings and Presentation	-	29.0	20.0	2.0	10.0	11.0	-	-	-	-	-	72.0	10,570
IX. Project Administration													
A. Manage Study Elements	-	14.0	4.0	-	6.0	-	-	-	-	-	4.0	28.0	3,990
Subtotal: Project Administration	-	14.0	4.0	-	6.0	-	-	-	-	-	4.0	28.0	3,990
Total Consulting Labor for All Elements	12.5	107.0	380.0	9.0	76.0	65.0	23.0	8.0	67.0	70.0	4.0	809.5	109,811
Total Direct Expenses to be Billed													-
PROJECT COST NOT TO EXCEED													\$ 109,811

EXHIBIT ^{xi}C"
INSURANCE REQUIREMENTS

CONSULTANT shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408)730-7710.

CONSULTANT shall take out and maintain during the life of the contract Workers' Compensation insurance coverage to statutory limits as may be required by law.

CONSULTANT shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONSULTANT, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONSULTANT, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONSULTANT'S or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- « The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract. *Simply indicating on the certificate that the certificate holder is named as additional insured is not acceptable; an endorsement must be provided.*
- ® The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.